

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF TEXAS  
McALLEN DIVISION

UNITED STATES OF AMERICA,	)	CRIMINAL
	)	
Plaintiff,	)	McAllen, Texas
	)	Tuesday, July 10, 2012
vs.	)	(3:19 p.m. to 4:24 p.m.)
	)	
PEDRO ALVARADO,	)	CASE NO: 7:12-MJ-1397-1
ARNOLDO ALVARADO,	)	CASE NO: 7:12-MJ-1397-2
	)	
Defendants.	)	

MATERIAL WITNESS HEARING / PRELIMINARY EXAMINATION / DETENTION

BEFORE THE HONORABLE PETER E. ORMSBY,  
UNITED STATES MAGISTRATE JUDGE

<u>Appearances:</u>	See next page
Court Recorder:	Rick Rodriguez
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McAllen, Texas; Tuesday, July 10, 2012; 3:19 p.m.

(Call to Order)

**THE COURT:** Okay. Next is Magistrate Case Number M-12-1397. This is *United States versus Pedro Alvarado*.

**MR. ALANIZ:** The Government is present and ready, your Honor.

**THE COURT:** If you could just come forward up here and the same case also, Arnoldo Alvarado. Okay.

**MR. GARCIA:** Good afternoon, your Honor, Carlos Garcia on behalf of Arnoldo Alvarado.

**MR. ALVAREZ:** Oscar Alvarez for the defendant Pedro Alvarado, your Honor.

**THE COURT:** Okay, good afternoon. In this case, the defendants were named in a criminal complaint and so there are two things we would need to address at this time. First of all is the preliminary examination or probable cause hearing. And on that, Mr. Alvarez, have you discussed with your client whether or not he wishes to proceed with a probable cause hearing?

**MR. ALVAREZ:** We wish to have a probable cause hearing.

**THE COURT:** Okay. And, Mr. Garcia, your client as well?

**MR. GARCIA:** Same response.

**THE COURT:** Okay, very well. We'll go ahead and take

Reneau - Direct / By Mr. Alaniz

5

1 that up then and, Mr. Alvarado -- Mr. Alvarado, Sr. and Pedro,  
2 you can have a seat next to your attorney there and,  
3 Mr. Arnoldo Alvarado, you can have a seat next to your attorney  
4 over here on the other side. Okay.

5 **MR. ALANIZ:** Yes, your Honor. The Government would  
6 call Jean Paul Reneau to the witness stand.

7 **THE COURT:** Okay, very well.

8 **THE CLERK:** Please raise your right hand.

9 **JEAN PAUL RENEAU, GOVERNMENT'S WITNESS, SWORN**

10 **MR. ALANIZ:** May I proceed, your Honor?

11 **THE COURT:** Yes, sir.

12 **DIRECT EXAMINATION**

13 **BY MR. ALANIZ:**

14 Q Sir, can you please state your full name?

15 A Jean Paul Reneau.

16 Q And where are you employed?

17 A United States Homeland Security Investigations in McAllen,  
18 Texas.

19 Q And you're involved in the investigation on the case that  
20 led to the arrest of Mr. Pedro Alvarado and Arnoldo Alvarado;  
21 is that correct?

22 A Yes, sir.

23 Q Can you tell the Court what happened on -- around midnight  
24 of June -- July the 3rd of this year?

25 A On July the 3rd around midnight, special agents

1 established surveillance in the Hargill, Texas, area in  
2 anticipation of a narcotics transaction that was going to occur  
3 there.

4 Q Okay. And you say "special agents," how many agents were  
5 actually -- were called out or went to the location in Hargill,  
6 Texas?

7 A For the initial surveillance, it was four agents.

8 Q Okay. And how many vehicles did you-all -- were you all  
9 in?

10 A Three vehicles.

11 Q And were you one of the agents that were go -- went out  
12 and traveled to Hargill, Texas, that night?

13 A Yes, sir, I was.

14 Q Can you give the Court some idea of where in Hargill you  
15 were located or were driving around?

16 A I was located to the east of Hargill approximately half a  
17 mile on FM 490.

18 Q Okay. And were you by yourself or were you with you  
19 another agent?

20 A I was with another agent.

21 Q The other two agents that were in other vehicles, who were  
22 they, sir?

23 A Special Agent Kelton Harrison was located south in Hargill  
24 approximately at the intersection of FM 493 and Cemetery Road  
25 and Special Agent Juan Mendez was located approximately on the

1 intersection of FM 88 and Mile 11.

2 Q Okay. And obviously you-all were out there because you  
3 were expecting some kind of drug trafficking activity?

4 A Correct, yes, sir.

5 Q And the area or the location where you-all believed there  
6 might be some drug trafficking activity, where was that located  
7 -- where was that area?

8 A That was east of Hargill, Texas, on Cemetery Road.

9 Q Cemetery Road also is known as -- what is it, 11th Street?

10 A Yes, sir.

11 Q Okay. And can you tell the Court whether 11th Street runs  
12 east, west or which direction does it run?

13 A It runs both directions east and west from 493 -- between  
14 493 and FM 88 as well as west of FM 493.

15 Q And 493 runs in which direction?

16 A North and south.

17 Q And you said that Agent Harrison was at that intersection  
18 or the corner of 493 and what other road?

19 A At Cemetery Road.

20 Q And around what time did you hear over the radio anything  
21 concerning any kind of a shots fired or some kind of activity  
22 with Agent Harrison?

23 A At approximately 3:30 a.m.

24 Q And around 3:30 a.m., how long had you and these other  
25 agents been out there doing surveillance?

- 1 A Approximately three hours.
- 2 Q And can you tell the Court what happened around 3:30?
- 3 What did you hear?
- 4 A Special Agent Harrison came on the radio and he stated
- 5 that he was being shot at. He didn't state any additional
- 6 details at that time.
- 7 Q Okay. And from where Agent Harrison was, how far away
- 8 were you at that time that he called over the radio concerning
- 9 some shots fired?
- 10 A Approximately half a mile.
- 11 Q What did you do when you heard Agent Harrison over the
- 12 radio telling about there were shots fired?
- 13 A Proceeded to the location where I believed that Agent
- 14 Harrison was located.
- 15 Q And what location was that, sir?
- 16 A 493 and Cemetery Road, the intersection of those two.
- 17 Q When you got there, what did you see?
- 18 A Nothing.
- 19 Q Okay. So what did you do at that point?
- 20 A At that point, I began traveling up and down FM 493 south
- 21 of FM 490 in an attempt to locate his vehicle along with
- 22 Special Agent Rudy Garza.
- 23 Q Okay. Now, once you -- when you first heard the initial
- 24 call over the radio about shots fired, after that did you --
- 25 were you still in contact with Agent Harrison or not?

1 A No. For approximately ten minutes we lost contact with  
2 Agent Harrison.

3 Q So after going to the intersection of 493 and Cemetery  
4 Road and didn't find Agent Harrison there, what did you do at  
5 that point?

6 A We canvassed the area for his vehicle or any additional  
7 vehicles that might be involved.

8 Q Okay. And at some point did you find out where Agent  
9 Harrison was --

10 A Correct, yes, sir.

11 Q -- located?

12 A He called me on his cell phone.

13 Q On his personal cell phone?

14 A Yes, sir.

15 Q And -- okay. And what did he tell you at that point?

16 A At that point, he stated he was located in the bushes  
17 where the road dead ends.

18 Q Okay. Other than that information, anything about which  
19 road or anything like that that he gave you?

20 A No, sir.

21 Q Okay. So what did you do at that point?

22 A At that point, I proceeded north on FM 493 to the  
23 intersection of FM 493 and FM 186.

24 Q Okay. And that intersection of 493?

25 A Yes, sir.

1 Q And the other was what? I'm sorry.

2 A FM 186.

3 Q Okay. How far away from where Agent Harrison initially  
4 was stationed or conducting surveillance -- how far of a  
5 distance is that?

6 A Approximately three miles.

7 Q Can you tell the Court what you saw when you got to the  
8 intersection of those two roads?

9 A When I got to the intersection of those two roads, to the  
10 north of the road in a field I observed S.A. Harrison's vehicle  
11 facing eastbound.

12 Q Okay. And did you see Agent Harrison at that time?

13 A At that time, no.

14 Q Okay. What did -- what happened next?

15 A I exited my vehicle, jumped a fence, proceeded to S.A.  
16 Harrison's vehicle. At that point, I observed S.A. Harrison.

17 Q Okay. What was he doing at that time?

18 A He was walking towards me.

19 Q Let, let me ask you -- take you back for a little bit. At  
20 what point did you find out that Agent Harrison had actually  
21 been shot?

22 A He had stated on the radio shortly after calling out that  
23 shots were fired that he had been shot and no further details  
24 were provided.

25 Q So when you get the -- when you find Agent Harrison, he's

1 walking around but you already -- you do know that he had been  
2 shot?

3 A Correct.

4 Q Okay. So what did you do next?

5 A At that point, we set him on the ground and then the  
6 decision was made to transport him to a hospital.

7 Q Okay. And who transported him to the hospital?

8 A S.A. Rudy Garza in his government vehicle.

9 Q Other than putting him in the vehicle, did you look around  
10 at all or examine his vehicle or anything of that nature?

11 A At that time, no.

12 Q Okay. After taking Agent Harrison to the hospital, have  
13 -- did you ever examine his vehicle, who was in it?

14 A Yes, sir, I took pictures.

15 Q Okay. When was that? Was that the next day or when?

16 A No, sir. That was that same morning after transporting  
17 Agent Harrison to the ambulance that was waiting at FM 107 and  
18 281. I returned to the scene of the accident and took  
19 pictures.

20 Q Okay. Now, can you tell the Court and describe to the  
21 Court the type of damage that Agent Harrison's vehicle had  
22 sustained?

23 A The front right fender of Agent Harrison's vehicle was  
24 completely destroyed. There were two holes in the passenger  
25 side vehicle -- correction -- the passenger window. The rear

1 window of the SUV was knocked out and there was numerous  
2 scratches over the entire vehicle.

3 Q And you took pictures of that vehicle. Was it that same  
4 morning?

5 A Yes, sir.

6 Q Okay. Agent Harrison -- when you spoke to him that night,  
7 did he give you any indication at all who -- as to who might be  
8 involved or might have been involved in the assault of Agent  
9 Harrison?

10 A He didn't give an indication. He stated he had been  
11 followed by two pickup trucks.

12 Q Okay. Did he -- was he able to describe the type of  
13 pickup trucks that were following him?

14 A I believe he stated one was an F-250.

15 Q Okay. Now, after this incident on July the 3rd, what did  
16 special agents do to try to investigate who might have -- who  
17 might be involved in the assault of Agent Harrison?

18 A Special agents conducted two consent searches at residence  
19 there in Hargill, Texas, one being believed to be where the  
20 narcotics were originally stored. The second location was a  
21 previously identified stash house that was near where Agent  
22 Harrison was initially parked.

23 Q These two locations that you just described to the Court  
24 are -- where are they specifically in Hargill, on what, what  
25 road or what street?

1 A They're both located on Cemetery Road.

2 Q Okay. The stash house -- or the house that you-all  
3 believed there might be some drug trafficking activity -- in  
4 regards to where Agent Harrison was located, how far is it from  
5 that location?

6 A The initial stash house during the course of the  
7 investigation was approximately a hundred or a hundred and  
8 fifty yards from S.A. Harrison's location.

9 Q Okay. And that residence is -- who does it belong to?

10 A Pedro Alvarado.

11 Q And so Pedro Alvarado's home or residence is about a  
12 hundred to a hundred and fifty yards from where Agent Harrison  
13 was parked?

14 A Approximately, yes, sir.

15 Q Okay. Can you describe to the Court what type of a  
16 structure Pedro Alvarado's home is and what kind of a -- does  
17 he have a fence? Does it have walls or -- can you describe  
18 that to the Judge?

19 A It's a pink residence, brick house, shingle roof. It does  
20 have a fence out front that's usually locked around the  
21 residence. The entire property is fenced in surrounded on  
22 three sides by trees.

23 Q Okay. And that residence is on the east or west of 493?

24 A It's going to be on the east side.

25 Q Okay. And between the residence of Mr. Alvarado -- Pedro

1 Alvarado and where agent Harrison was located, what's in  
2 between there?

3 A Bushes.

4 Q Now, as to the residence that you-all were looking at that  
5 made -- might have -- there might have been some drug traffic  
6 activity, where is that one located?

7 A It's approximately one mile from where S.A. Harrison was  
8 parked on Cemetery Road, to the east.

9 Q Now, when agents went and did a consent search of the  
10 Pedro Alvarado residence, can you tell the Court what happened  
11 then?

12 A During the initial consent, agents asked to search the  
13 residence for illegal aliens. At that time, special agents had  
14 made contact with Mr. Alvarado. He did state there were two  
15 illegal aliens inside the roof of his residence.

16 Q Okay. Were those aliens ever apprehended or arrested?

17 A Yes, sir, they were.

18 Q Okay. And after the rest of the illegal aliens, what  
19 happened to Mr. Alvarado and his son Arnoldo Alvarado?

20 A Both individuals were transported to the FBI building here  
21 in McAllen, Texas.

22 Q What day was that, sir?

23 A That would have been July 3rd.

24 Q Okay. What time approximately, if you remember?

25 A I don't remember.

1 Q Okay. Now, once at the FBI building, did either Mr. Pedro  
2 Alvarado or Arnoldo Alvarado agree to talk to agents?

3 A We read Arnoldo Alvarado his Miranda rights. He agreed to  
4 waive those rights and speak to special agents without an  
5 attorney present.

6 Q Okay. And were you involved in the interview of  
7 Mr. Arnoldo Alvarado?

8 A I had stepped in and out, yes, sir.

9 Q Some other agents were conducting the interview?

10 A Yes, sir.

11 Q Can you tell the Court, Agent Reneau, what Mr. Arnoldo  
12 Alvarado told the agents was his role in this assault of Agent  
13 Harrison?

14 A Mr. Arnoldo Alvarado stated that he had been firing a 9 mm  
15 handgun at a silver vehicle earlier that morning.

16 Q Okay. Did he tell you anything about how this all got  
17 started, if you can recall?

18 A He stated that on July 3rd in the morning, he was awoken  
19 by his dad, himself and his brother. They were instructed to  
20 retrieve their weapons and proceeded to their vehicles.

21 Q Okay. And what vehicle did Mr. Arnoldo Alvarado tell you  
22 that they got into at that time?

23 A They got into a blue F-150.

24 Q And who got into that F-150 Ford?

25 A Pedro Alvarado was operating the vehicle. Arnoldo

1 Alvarado was in the front passenger side and the minor was in  
2 the rear passenger seat.

3 Q And did Arnoldo Alvarado tell you what type of weapons and  
4 who had weapons when they got into the vehicle?

5 A Yes, sir. Arnoldo Alvarado stated he was carrying a 9 mm  
6 handgun and the minor in the rear seat was carrying a .22  
7 rifle.

8 Q Okay. Once they got into the pickup truck, did he tell  
9 you where -- in which direction they drove to?

10 A Yes, sir. They proceeded west on Cemetery Road.

11 Q Let me take you back for a second. Did Arnoldo Alvarado  
12 tell you as to why at that point of the night they decided to  
13 get into the vehicles with their weapons and travel outside  
14 their property?

15 A Yes, sir. He stated that Pedro Alvarado had received a  
16 phone call earlier that evening explaining there was a  
17 suspicious vehicle near their residence.

18 Q And now, in order to get out of the Pedro Alvarado  
19 residence, do they have to go through some kind of gate or  
20 anything?

21 A Yes, sir. There is a gate at the front entrance to that  
22 property.

23 Q Okay. And in which direction did Pedro Alvarado and his  
24 sons drive when they got out of the residence?

25 A They proceeded westbound on Cemetery.

1 Q Okay. Toward which intersection?

2 A Towards the intersection of Cemetery Road and FM 493.

3 Q And that's where who was located?

4 A S.A. Harrison was located.

5 Q What did Arnoldo Alvarado tell you that he did or his  
6 brother did on the way -- on -- when they were traveling  
7 towards the intersection of 493 and Cemetery Road?

8 A Mr. Arnoldo Alvarado stated that as they were proceeding  
9 that way, he heard his brother -- the minor located in the rear  
10 seat begin firing approximately six shots with the .22 rifle  
11 towards the silver vehicle.

12 Q Okay. And the silver vehicle, who -- was occupied by who?

13 A Special Agent Kelton Harrison.

14 Q What did Arnoldo Alvarado tell you that he did after his  
15 brother -- younger brother, the minor fired his -- the rifle at  
16 Agent Harrison's vehicle?

17 A Arnoldo Alvarado stated that at that time, he fired  
18 approximately two rounds into the air from his 9 mm handgun.

19 Q And then what he did do after that?

20 A At that point, the silver vehicle began traveling  
21 northbound on FM 493. Pedro Alvarado began following that  
22 vehicle. Arnoldo Alvarado stated he began firing his 9 mm  
23 handgun at the silver vehicle.

24 Q Okay. Did he ever -- Mr. Arnoldo Alvarado ever talk --  
25 tell the agents how many rounds he fired approximately?

1 A No. Approximately he did not. He did state that he had  
2 emptied the clip that was inside the magazine initially and  
3 then reloaded that second magazine at some point.

4 Q Subsequent investigation as to -- concerning Agent  
5 Harrison, did you-all discover or find out at what point Agent  
6 Harrison was actually hit with the gunshot?

7 A Agent Harrison stated to me that he believed he was hit  
8 with a round approximately at the intersection of 490 and 493  
9 while fleeing northbound.

10 Q Now, where -- what part of his -- of Agent Harrison's body  
11 did the shot hit him?

12 A The lower back.

13 Q Now, you said that Agent Harrison told you that he was hit  
14 with a gunshot north of his location where he was parked.

15 A Correct.

16 Q How far away from where he was parked doing surveillance  
17 did -- and the location where he actually got hit, how far is  
18 that?

19 A Approximately a quarter of a mile, probably less.

20 Q During the interview of Arnolando Alvarado, did he ever  
21 mention to agents anything about as to why he shot at this  
22 vehicle?

23 A Not to my knowledge, no.

24 Q And what did Arnolando tell you that he did and his father  
25 did when they were chasing or following the silver vehicle?

1 A Arnoldo Alvarado stated while he was chasing the vehicle,  
2 he was firing his weapon at the vehicle. At some point, he  
3 claimed the silver Jeep was too far in front of his vehicle,  
4 the F-150, and he began just firing rounds into the air.

5 Q And what did he tell you that he -- they did after they  
6 lost sight of the silver vehicle?

7 A He claimed they turned around and returned to their  
8 residence.

9 Q And once they got back to the residence, did Arnoldo  
10 Alvarado tell agents what they did with the weapons that they  
11 used?

12 A Not to my knowledge, no.

13 Q Do you know whether or not those weapons were ever located  
14 and seized?

15 A Yes, sir, they were.

16 Q Where were they found, sir?

17 A They were found in the attic of Pedro Alvarado's residence  
18 under the insulation, concealed.

19 Q The Pedro Alvarado that was -- that you've been talking  
20 about during the testimony, Agent Reneau, do you see him  
21 present in the courtroom today?

22 A I do.

23 Q Can you tell the Court where he sits -- where he's sitting  
24 and what he's wearing?

25 A Arnoldo Alvarado is sitting to my right wearing a green

1 T-shirt.

2 Q Arnoldo Alvarado?

3 A Yes, sir.

4 Q How about Pedro Alvarado?

5 A He's also sitting to my right wearing a red T-shirt with  
6 maroon lettering.

7 **MR. ALANIZ:** Your Honor, I would ask the Court to let  
8 the record reflect that the witness identified the Defendants.

9 **THE COURT:** Okay. Yes, it will.

10 **MR. ALANIZ:** And at this time the Government will  
11 pass the witness, your Honor.

12 **THE COURT:** Okay, very well. And let's see,  
13 Mr. Alvarez?

14 **MR. ALVAREZ:** Well, Mr. Garcia is going to be going  
15 first, your Honor.

16 **THE COURT:** Okay, very well. If you could point the  
17 microphone over towards him then.

18 **MR. ALVAREZ:** Yes, your Honor.

19 **MR. GARCIA:** Your Honor, if I may, may I approach the  
20 witness?

21 **THE COURT:** Sure.

22 **(Counsel approached)**

23 //

24 //

25 //

1 **CROSS EXAMINATION**

2 **BY MR. GARCIA:**

3 Q Agent Reneau, I'm going to show you Defendant's Exhibit  
4 Number 1. I'm going to ask you to look at it. Do you  
5 recognize that map?

6 A Yes, I do.

7 Q Would you tell the Court what it illustrates or what it  
8 shows?

9 A It's a satellite image of the intersection of FM 493 and  
10 Cemetery Road in Hargill, Texas.

11 Q And that map shows the residence -- the Alvarado  
12 residence?

13 A Yes, it does.

14 Q And it shows the property, the Alvarado property, correct?

15 A It shows the residence. I'm not aware of the property.

16 Q The -- are you aware that the house that's at the  
17 intersection of Cemetery Road and 493 is part of the Alvarado  
18 property?

19 A I heard a statement to that effect but I don't have any  
20 supporting evidence.

21 Q Where did you hear that statement?

22 A I don't know, during an interview.

23 Q Interview of who?

24 A It would have been some information passed to me from  
25 another agent.

1           **MR. GARCIA:** Your Honor, I ask that Defendant's  
2 Exhibit Number 1 be admitted.

3           **THE COURT:** Okay.

4           **MR. ALANIZ:** No objection, your Honor.

5           **THE COURT:** Okay. It will be admitted for purposes  
6 of the hearing here.

7           **(Defendant's Exhibit Number 1 was received in evidence)**

8 **BY MR. GARCIA:**

9 Q     How long had this investigation been taking place, Agent?

10 A     Approximately two years.

11 Q     And in the two years, you hadn't thought to look who owned  
12 that property where the stash house was?

13 A     The stash house, yes, sir, not the property adjacent to  
14 the stash house.

15 Q     And the stash -- that property there -- that part of the  
16 stash house belonged to who?

17 A     I believe it's registered to Mr. Alvarado's wife.

18 Q     Was Agent Harrison armed?

19 A     Not to my knowledge.

20 Q     Did he fire a weapon?

21 A     Not to my knowledge.

22 Q     Were any tests conducted to see if he fired a weapon?

23 A     I believe those tests are under way.

24 Q     Where do you get that information from?

25 A     The vehicle Agent Harrison was occupying was transported

1 to the FBI in San Antonio for further analysis.

2 Q Okay. The fact is, my client Arnolando told you he'd been  
3 fired upon, correct?

4 A He believed he had heard four shots, yes, sir.

5 Q That they were shot in his direction, correct?

6 A I don't know that information.

7 Q Well you were in and out of the interview, right?

8 A Correct.

9 Q But part of the interview he told you he shot in self-  
10 defense?

11 A I wasn't in there for that portion.

12 Q Who was?

13 A Special Agent Jorge -- I don't know his last name -- from  
14 the Federal Bureau of Investigation, Special Agent Ernie Baca  
15 (phonetic) from Homeland Security Investigations.

16 Q Agent Harrison was parked on private property?

17 A From my understanding, yes, sir.

18 Q Did he have permission to be on that property?

19 A Not to my knowledge.

20 **MR. GARCIA:** Your Honor, I pass the witness.

21 **THE COURT:** Okay. Mr. Alvarez.

22 **CROSS EXAMINATION**

23 **BY MR. ALVAREZ:**

24 Q Do you have a weapon?

25 A Sir?

1 Q Were you carrying a weapon?

2 A Yes, I was.

3 Q What about the other agents?

4 A To my knowledge, yes, they were.

5 Q Why was Harrison not carrying a weapon?

6 A I don't have that information.

7 Q Would that be unusual for him not to be carrying a weapon  
8 being out there at 3:00 o'clock in the morning doing  
9 surveillance in a drug trafficking investigation that had been  
10 taking place for a period of two years?

11 A It would be unusual, yes, sir.

12 Q Was it determined what slug was found in his body, whether  
13 it was from the 9 mm or the .22?

14 A That slug has not been removed. From what I understand  
15 based on x-rays, the doctors believe it's a 9-mill.

16 Q We don't know that for a fact yet?

17 A Based on the size on the x-ray, my understanding is they  
18 believe it's a 9-mill. We do not know that for a fact.

19 Q And the -- were any cases recovered at the scene or  
20 anywhere else?

21 A Yes, sir. There were casings recovered at the scene as  
22 well as at the accident site.

23 Q And the cases were from what type of weapon?

24 A 9 mm.

25 Q Were any cases recovered fired from a .22 caliber rifle?

1 A Not to my knowledge.

2 Q The second vehicle that you testified had been trailing  
3 the Alvarado vehicle, whose vehicle was that?

4 A That's a F-250 driven by a Rene Garcia.

5 Q Did he fire any -- did he fire a weapon, to your  
6 knowledge?

7 A The investigation has not determined that yet.

8 Q Have there been any scientific tests conducted of the  
9 Defendants that determine whether or not they fired a weapon?

10 A Not to my knowledge.

11 Q And according to your information, Mr. Pedro Alvarado did  
12 not fire a weapon; is that correct?

13 A That is correct.

14 Q And you have no information from anybody that he ordered  
15 his sons to fire a weapon, correct?

16 A Correct.

17 Q And you do have information that Pedro Alvarado received a  
18 telephone call approximately, I guess, 3:00 in the morning to  
19 indicate that there was a suspicious vehicle on his property,  
20 correct?

21 A Yes, sir.

22 Q And how dark is it out there?

23 A It's very dark. There's very few streetlights.

24 Q And the agent was not in uniform; is that right?

25 A Correct.

1 Q And he was not in a marked unit, correct?

2 A Correct.

3 Q And the Alvarados actually were investigating a vehicle  
4 that in plain view could not be determined whether that was law  
5 enforcement or not, correct?

6 A Correct.

7 Q And when they approached that vehicle, that vehicle exited  
8 their property and took off; is that right?

9 A Correct.

10 Q No explanation was made by that person to identify himself  
11 in any way, correct?

12 A Not to my knowledge, no.

13 Q Did you happen to interview Mrs. -- Mr. Alvarado's wife?

14 A Other agents did. I did not.

15 Q And you heard about a home invasion that had occurred at  
16 their home approximately some months back; is that correct?

17 A Yes, sir.

18 Q And they indicated that in that home invasion, shots were  
19 exchanged as well, correct?

20 A Yes, sir.

21 Q And it is common knowledge in the Hargill area that  
22 numerous home invasions take place pretty regularly, correct?

23 A I do not have any information as far as that's concerned.

24 Q But if a home invasion took place, that -- the town of  
25 Hargill is not an incorporated community; is that correct, or a

1 town?

2 A Correct, yes, sir.

3 Q They have no police?

4 A Yes, sir.

5 Q They have no law enforcement at all, correct?

6 A They are under the jurisdiction of the county.

7 Q Of the county. Have you any idea how long it would take a  
8 county to respond to an incident of home invasion in the  
9 Hargill area?

10 A No, sir.

11 Q Would it surprise you that it could be as long as an hour?

12 A That would not surprise me, no.

13 Q So would it be unreasonable for a homeowner to protect  
14 their property by investigating who's trespassing on their  
15 property in an unmarked vehicle? Would that be unreasonable to  
16 do?

17 A Not to my knowledge, no.

18 Q Have you learned that the Alvarado residence is actually a  
19 12-acre tract of land?

20 A No, sir.

21 Q When you had arrived at the Alvarado residence sometimes  
22 later to investigate after the shooting had taken place, did  
23 the family cooperate with the agents?

24 A Yes, sir.

25 Q Did they in any way try to hide the aliens in between the

1 shooting and the time you guys arrived?

2 A No, sir.

3 Q They were still there, correct?

4 A Yes, sir.

5 Q And they -- the family told you where the weapons were  
6 located?

7 A I believe so, yes, sir.

8 Q And who lives at the residence?

9 A Arnoldo Alvarado, Pedro Alvarado, his wife, the minor son  
10 and from what we can tell, the two illegal aliens.

11 Q You would not consider that a stash house, correct?

12 A Stash house for what?

13 Q People who were living there.

14 A Correct. But we did have information it was a narcotics  
15 stash house.

16 Q Did you find any narcotics?

17 A Not at that time, no.

18 Q Have you ever found narcotics there?

19 A No, sir.

20 Q You've never found narcotics at any time?

21 A Not to my knowledge, no, sir.

22 Q Any large amounts of money?

23 A No, sir.

24 Q Any drug paraphernalia?

25 A Not to my knowledge, no, sir.

1 Q And you have interviewed the material witnesses; is that  
2 correct?

3 A They were -- one of them was interviewed, to my knowledge.  
4 The other one did not wish to make a statement.

5 Q Which one was interviewed?

6 A Mario Ascencio (phonetic) Martir (phonetic).

7 Q Did he not tell you that he was involved in a major  
8 traffic accident nearby --

9 A Correct.

10 Q -- near the Alvarado residence?

11 A Correct, yes, sir.

12 Q Why he was being transported somewhere else; is that  
13 right?

14 A From what I understand, yes, sir.

15 Q And his presence in the United States did not involve  
16 Mr. Alvarado; is that correct?

17 A Not to my knowledge, no.

18 Q And he actually approached the Alvarado residence for  
19 assistance because of his injuries, correct?

20 A According to him, yes, sir.

21 Q And he had -- he and the other alien had been severely  
22 injured in an accident, correct?

23 A I don't have any information to that.

24 Q And they told you that they had been working there as  
25 employees, correct?

1 A Correct.

2 Q And there are countless people in the United States that  
3 employ illegal aliens, correct?

4 A Yes, sir.

5 Q Including some public officials?

6 A I'm sure.

7 Q And you took -- you arrested Mr. Alvarado. You handcuffed  
8 him and took him -- brought him to the FBI building; is that  
9 right?

10 A No, sir. I believe they asked him to go to the FBI for an  
11 interview. He was not handcuffed.

12 Q All right. Did he make any statement?

13 A He didn't make statements on the way to the FBI building,  
14 from what I understand. I was not present for those  
15 statements.

16 MR. ALVAREZ: Okay. That's all, your Honor. Thank  
17 you, Agent.

18 THE COURT: Okay.

19 MR. ALVAREZ: Oh, by the way, how is Agent Harrison  
20 doing?

21 THE WITNESS: He's making a full recovery from what  
22 we understand.

23 MR. ALVAREZ: Very well, good.

24 MR. ALANIZ: I have some follow-up questions, your  
25 Honor.

1                   **THE COURT:** Yes, uh-huh.

2                   **REDIRECT EXAMINATION**

3                   **BY MR. ALANIZ:**

4           Q       Just in regards to the property where Mr. Alvarado and his  
5 family lives, they live in -- what they have, was is it a house  
6 and what other structures are there?

7           A       There's a house. There's some small auxiliary structures  
8 in the rear probably associated with some type of animal care.

9           Q       Okay. And is that on the north side or south side of  
10 Cemetery Road?

11          A       It's on the north side.

12          Q       Okay. And the house and the structures are surrounded by  
13 what, by a fence or what kind of -- what is it?

14          A       Yes, sir, they're surrounded by a fence.

15          Q       By a fence, okay. What type of fence?

16          A       It's a barbed wire fence, from my understanding.

17          Q       Okay. Now, that's where Mr. Alvarado's family lives; is  
18 that correct?

19          A       Correct, yes, sir.

20          Q       Okay. Now, if you go from that -- from that residence, if  
21 you go, I guess, west towards 493, what's in between 493 and  
22 the Alvarado residence?

23          A       There's another structure there that's abandoned also on a  
24 fenced-in portion of land. In between those two structures is  
25 nothing but trees.

1 Q Okay. It's brush basically?

2 A Correct, yes, sir.

3 Q So between the intersection of 493 and Cemetery Road and  
4 the Alvarado property is just brush area?

5 A Correct, besides one house.

6 Q Okay. Besides one house. And where is that house located  
7 in relation to the intersection of 493 and Cemetery Road?

8 A That abandoned residence sits right on the intersection of  
9 those two streets.

10 Q Okay. And you noticed that nobody lives there?

11 A From what I could tell, yes, sir.

12 Q Okay. And how could tell that nobody lives there?

13 A Number one, there were no power lines hooked up to the  
14 residence. The inside was filled with wood and junk.

15 Q Okay. So the property or the place where Agent Harrison  
16 was parked is how far away from the fenced area of where the  
17 Alvarados live?

18 A Approximately a hundred yards.

19 Q And do you have information that that property at the  
20 corner intersection of 493 and Cemetery Road is owned by the  
21 Alvarados?

22 A No, I don't.

23 **MR. ALANIZ:** I'll pass the witness, your Honor.

24 **THE COURT:** Okay. So right -- as of right now,  
25 you've -- Special Agent Reneau, you indicated that Special

1 Agent Harrison was parked on private property but as of right  
2 now, you don't know whose private property that is; is that  
3 correct or --

4 **THE WITNESS:** Yes, Judge. I remember someone stating  
5 it belonged to a relative of the family but I can't say for  
6 sure.

7 **THE COURT:** Okay. And --

8 **MR. ALVAREZ:** Your Honor, may I ask a --

9 **THE COURT:** Sure.

10 **MR. ALVAREZ:** -- couple follow-up questions in that  
11 regard?

12 **RECROSS EXAMINATION**

13 **BY MR. ALVAREZ:**

14 Q The location where Agent Harrison was parked, is it fenced  
15 -- did he have to go through any kind of fence, any kind of  
16 structure to be able to park his vehicle in that location?

17 A No, sir. It's fenced on two sides, the north side and the  
18 east side but the west side and south side are open.

19 Q So he didn't have to go through any kind of gate or fence  
20 or anything at all whatsoever to be able to park his vehicle  
21 there?

22 A Correct.

23 Q And how far away from Cemetery Road was he parked  
24 approximately?

25 A Ten yards, 15 yards, approximately.

1                   **MR. ALVAREZ:** I have no further questions, your  
2 Honor.

3                   **THE COURT:** Okay. Anything else?

4                   **MR. GARCIA:** I have a few follow-up questions.

5                   **THE COURT:** Sure.

6                                   **REXCROSS EXAMINATION**

7                   **BY MR. GARCIA:**

8           Q       It's not a public roadway, is it?

9           A       I'm sorry.

10          Q       Where he was parked -- Agent Harrison wasn't parked on a  
11 public roadway --

12          A       No, sir.

13          Q       -- correct?

14          A       No, sir.

15          Q       He was parked on someone else's property --

16          A       Yes, sir.

17          Q       -- right?

18          A       Correct.

19          Q       Conducting surveillance?

20          A       Correct.

21          Q       All right. In a -- at a house -- conducting surveillance  
22 of a house -- let me just clarify. Was he conducting  
23 surveillance of the house where the Alvarados lived?

24          A       No, sir.

25          Q       Another house?

1 A Correct, yes, sir.

2 Q Was he parked in that tree in front of that house?

3 A I believe he was parked directly to the east of that tree.

4 Q And that tree, you'd agree, is in that satellite image  
5 that you looked at earlier, correct?

6 A I'd have to look at the image again but probably.

7 Q Okay.

8 **MR. GARCIA:** Your honor, I have no further questions.

9 **THE COURT:** Okay.

10 **MR. ALVAREZ:** No questions, your Honor.

11 **THE COURT:** Okay. If there's nothing else, then I  
12 guess you can go ahead and step down. Thank you.

13 **(Witness stepped down)**

14 **THE COURT:** On the issue of probable cause,  
15 Mr. Garcia, did you wish to make an argument at this time on  
16 probable cause as to Arnaldo Alvarado?

17 **MR. GARCIA:** Not an issue of probable cause, your  
18 Honor.

19 **THE COURT:** Okay. And as to Pedro Alvarado,  
20 Mr. Alvarez, is there --

21 **MR. ALVAREZ:** No, your Honor.

22 **THE COURT:** I do find based on the testimony of  
23 Special Agent Reneau that there is probable cause. However,  
24 that's not a finding of guilt and at this stage, the Government  
25 has a much lower level of proof that applies here. It's simply

1 whether there is reason to or probable -- whether it's probable  
2 that there was a crime committed and that the Defendants were  
3 involved with that. I do find that that's been established.

4 Again, that doesn't mean that either Defendant is  
5 guilty of anything at this point. Obviously, there are various  
6 defenses that might be raised and other issues that could be  
7 raised as the case proceeds forward but we don't need to get  
8 into those at this time. The only issue is whether there is  
9 sufficient evidence to allow the case to go forward.

10 And on that, we do need to address the issue of bond as to both  
11 Pedro Alvarado and Arnoldo Alvarado and I am going to take  
12 judicial notice of the factual information in the Pretrial  
13 Services Report except to the extent it's clarified or  
14 corrected in connection with the hearing.

15 And, Mr. Alvarez, with regard to Pedro Alvarado, is  
16 there evidence or argument you wanted to present at this time?

17 **MR. ALVAREZ:** There is no evidence to present other  
18 than just pointing out some things in the Presentence Report.  
19 As far as the criminal history is concerned, that's one of  
20 those things that was taken into account in the recommendation.  
21 I would like to point out to the Court that one of the  
22 convictions is 18 years old and the other two are approximately  
23 ten years old.

24 The other aspects of the Report are pretty positive  
25 as far as his ties to the community but I don't believe he's a

1 risk of flight. As far as the danger, just like I mentioned,  
2 these convictions are old. I think that there can be a  
3 combination of conditions that would assure his appearance  
4 in court, your Honor, and guarantee the safety of the  
5 community. So I'm asking for bond in this case.

6 **THE COURT:** Okay, thank you. And just addressing  
7 first with regard to Pedro Alvarado and, Mr. Alaniz, what is  
8 the Government's position on that?

9 **MR. ALANIZ:** We would ask for a detention, your  
10 Honor. Obviously, the evidence is just pretty clear as to what  
11 happened in this case. You have a father basically asking his  
12 two sons -- one of them which is a minor -- to basically go get  
13 the guns, to go outside their property -- not on their property  
14 -- go outside their property in a vehicle and then start  
15 shooting just a vehicle that they see and, you know, park near  
16 the intersection of these two roads. Let's stop there.

17 They continue following the vehicle and shooting at  
18 the vehicle without regard as to who's driving, how many people  
19 are in there. As far as danger to the community, Judge, I  
20 think it's pretty self-evident that this Defendant could not  
21 be, you know, released on bond without, you know, bringing a  
22 risk of this type of activity. So for those reasons, Judge,  
23 we're asking the Court to deny bond to Mr. Pedro Alvarado.

24 **THE COURT:** Okay. And in determining bond, I am  
25 required to apply the factors under The Federal Bail Reform

1 Act. I'll just go ahead and note in my findings as to those  
2 factors. And with regard to Mr. Pedro Alvarado, first of all,  
3 the factors that I'm required to take into account under  
4 federal law begin with the nature and seriousness of the  
5 alleged offense.

6 Obviously, there's a very serious offense being  
7 alleged against both Defendants, the conduct here involving  
8 shooting firearms and obviously in this case injuring a  
9 government special agent and luckily, you know, he wasn't  
10 killed. I mean, that kind of situation could have easily come  
11 out with a much worse situation and hopefully he will recover  
12 fully. But obviously the -- again, the nature of the charge  
13 here is a very serious one and it suggests a high degree of  
14 danger to the community and the situation with firearms being  
15 involved here. So that's one of the factors to be taken into  
16 account.

17 The other is the weight of the evidence. At this  
18 point, it's early in the -- this -- an early stage here. It's  
19 not part of the process at this point to try to predict what  
20 will happen as the case goes forward. The evidence is very  
21 strong that both of these Defendants were shooting at the  
22 person who turned out to be a special agent and as far as the  
23 other issues that might relate to the crime that's being  
24 alleged, you know, those things that may be arguments that  
25 could be made as the case goes forward.

1 Looking at the other factors under The Bail Reform Act, I'm  
2 required to take into account the personal circumstances and  
3 characteristics of the Defendant. There are positive factors  
4 with regard to Pedro Alvarado. He is -- essentially a lifetime  
5 resident of the area. He's a United States citizen. So  
6 there's no immigration issues we would need to worry about  
7 here. In the past, he's had employment in different  
8 capacities. I believe they actually -- some years back, the  
9 family had done farm labor which is certainly an honest and  
10 honorable type of work. He does have the support of his wife  
11 and so those are positive factors to take into account in  
12 considering bond and so I will consider those things. As was  
13 pointed out by Mr. Alvarez, there are positive circumstances  
14 there to look at.

15 On the negative side though, there's some serious  
16 concern, especially given Mr. Alvarado's criminal history.  
17 Although it was on older conviction, he has this prior felony  
18 conviction. It was a drug trafficking type of a conviction  
19 since apparently it involved the sale of 25 kilograms or more  
20 of marijuana. That was back in 1994 or some years back. If  
21 that was the only thing, then, then you might say that was a  
22 long time ago and things have changed but about -- less than  
23 ten years later he picked up two other felony drug trafficking  
24 convictions, one for trafficking again in marijuana, more than  
25 ten pounds but less than 100 pounds, also trafficking cocaine.

1           And so he has these prior drug-related convictions  
2 and in the context of the case here where he then -- first of  
3 all, presumably he should not have been in possession of a  
4 firearm at all being a -- presumably a felon who should not be  
5 anywhere near a firearm to begin with but then to be in this  
6 situation where he's out and firing or taking his sons out --  
7 and actually I guess as to him, he didn't actually possess the  
8 firearm. So maybe that's the distinction that might -- he  
9 might try to draw but where he tells his sons to get weapons  
10 and goes out, it's at least as bad. So that's a difficult, I  
11 mean, situation that makes the circumstances much more  
12 troubling.

13           In addition, he's also got an issue with drug use and  
14 has, you know, as of even recently been using cocaine. And if  
15 that were the only thing, again, there are conditions we might  
16 set to assist with some treatment or something like that but  
17 together with the nature of the charge and his prior drug  
18 convictions, I do find that under those circumstances that  
19 there are no conditions that would reasonably assure -- in this  
20 case, the safety of the community is the main issue. I agree  
21 with counsel for Mr. Alvarado that the risk of flight is not  
22 the primary concern here but I do find that based on those  
23 circumstances that any conditions that are available would not  
24 be adequate to address those circumstances.

25           If there's any material new information or facts that

1 come to light, Mr. Alvarado, your attorney will be able to move  
2 to reopen the hearing to consider those things if there is  
3 something like that but at this time, I do find that as far as  
4 Pedro Alvarado, we'll need to leave here with the Marshals  
5 pending further proceedings.

6 Was there anything else that we ought to address as  
7 to him -- to your client here today, Mr. Alvarez?

8 **MR. ALVAREZ:** No, your Honor.

9 **THE COURT:** Okay. And we appreciate your assisting  
10 Mr. Alvarado in this case, Mr. Alvarez, and we'll go ahead and  
11 excuse you all.

12 And then as to Mr. Arnoldo Alvarado, Mr. Garcia, did  
13 you have evidence or argument you wish to present as to bond?

14 **MR. GARCIA:** I do, your Honor. If I may, I've  
15 provided access of the documents. I'd ask the Court to  
16 consider Defendant's Exhibit Number 2, 3, 4, 5, 6, 7, 8 and 9  
17 in regards to Arnoldo Alvarado, your Honor, and, in effect,  
18 what they are is his registration to attend STC in the fall,  
19 his high school diploma -- Exhibit -- Defendant's Exhibit  
20 Number 4. Five and 6 are photographs of when he played  
21 football at Economedes High School.

22 Defendant's Exhibit Number 7, 8 and 9, your Honor,  
23 are presented to the Court for consideration in regards to the  
24 outstanding warrant for Mr. Alvarado out of County Court Number  
25 Two in Edinburgh. Specifically, Defendant's Exhibit Number 7,

1 the judgment nisi was issued on Mr. Alvarado and, again, this  
2 was a altercation that took place while he was 17 years old at  
3 high school -- attending high school and the notice of the  
4 court setting was sent to P.O. Box 2101 in Hargill. The family  
5 does not live at 2101. In fact, the documents themselves  
6 reflect a different P.O. Box number on the same -- on the  
7 previous document, Defendant's Exhibit Number 7. So he never  
8 received notice of the court hearing to confront the  
9 allegations of the misdemeanor assault and so we'd ask the  
10 Court to consider the Defendant's exhibit when deciding.

11 **THE COURT:** Okay, very well.

12 **MR. GARCIA:** And it's our position, your Honor, that  
13 we do believe that there are conditions or a combination of  
14 conditions to assure his appearance in court and also the  
15 safety of the community.

16 Mr. Alvarado did nothing more than defend himself,  
17 his property and his family from what they perceived to be a  
18 threat. I have nothing further.

19 **THE COURT:** Okay, thank you. And Mr. Alaniz?

20 **MR. ALANIZ:** Yes, we'd ask -- also ask for detention,  
21 your Honor, obviously that, you know, there's nothing more  
22 dangerous than an individual who basically coming upon a  
23 vehicle that he knows is occupied, starts basically shooting  
24 into the vehicle and as a matter of fact, I think he finishes  
25 up one of the clips and then reloads again and follows the

1 vehicle and shoots at it again. Obviously, there is no  
2 evidence at all at this point from anywhere from any witness  
3 that this was done in defense of anyone, including the  
4 Defendant. The evidence is clear, I mean, he -- they went  
5 outside with their weapons and started shooting at a vehicle  
6 that they knew was occupied with the intent to kill people that  
7 were inside.

8 Based on that, Judge, obviously, that there -- you  
9 know, this Defendant is a huge danger to society and we'd ask  
10 the Court to detain him without a bond.

11 **MR. GARCIA:** Your Honor, if I may?

12 **THE COURT:** Yes, sir.

13 **MR. GARCIA:** The Court will recall Agent Reneau's  
14 testimony that it's been Mr. Alvarado's position from the  
15 beginning that he fired after he thought he was fired upon.  
16 That's when he fired and that came from the agent's mouth  
17 during his testimony.

18 **THE COURT:** Okay. Again, I'm required to apply the  
19 same factors under federal law in determining bond. Again, as  
20 to Mr. Arnaldo Alvarado, there is a very serious charge being  
21 alleged against him. It's undisputed that he was out that  
22 evening with a 9 mm handgun firing at a vehicle and it looks  
23 like it's likely that he was -- that he may have fired one of  
24 the bullets that hit Special Agent Harrison or the one that  
25 lodged in his back.

1           The other parts of -- I mean, in that circumstance,  
2   it's certainly as, you know, dangerous as you get in terms of,  
3   again, a person firing a weapon in that way. Now, you know,  
4   maybe things will look different as things are developed  
5   further. As far as this suggestion that they were responding  
6   to what they thought was fired from somewhere else but at this  
7   point, that doesn't seem to be supported and there's also his  
8   own testimony that his brother was already firing the .22  
9   before he started firing the 9 mm.

10           And so that whole circumstance and just grabbing the  
11   guns and racing -- you know, running out there is circumstance  
12   that's troubling by itself but, again, as it -- as the case  
13   goes forward, there could be some explanations that would put  
14   this in a different light or evidence that might do so but for  
15   right now, it's a very serious and dangerous type of  
16   circumstances that are reflected by the allegations in the  
17   Complaint.

18           The other factors related to Mr. Arnoldo Alvarado are  
19   positive. He's a lifetime resident in the area. It -- he's  
20   gone to school here in this area. Obviously his family's here.  
21   The thing in this case about his family ties -- normally that's  
22   a positive circumstance we would look at that his family would  
23   help in terms of the Court being able to rely on them to, you  
24   know, influence a person to appear in court and not commit  
25   other offenses and so forth.

1           In this case, though, you've got his brother and his  
2 father that were actually out with him so as a, sort of a  
3 family -- they were out there as a family -- the three of them  
4 at least were out there with their weapons and so that makes it  
5 more difficult in that sense to consider that a positive factor  
6 -- those particular ties. There's no indication his mother had  
7 anything to do with this and she certainly is willing and  
8 wishes to help her son in any way she can. So that's a  
9 positive circumstance to consider there.

10           He has worked in the past as a migrant worker.  
11 Again, that's, you know, a great thing to have been -- have  
12 done. His plans to attend school -- I note from the papers  
13 that were submitted, that he was planning to do that which,  
14 again, certainly is a good thing for him to be doing and so I  
15 note those things.

16           The -- it is a concern that he already had a pending  
17 assault charge that was brought against him. Right now the  
18 record stands that, you know, when his case was called, he  
19 failed to appear and there was a warrant issued for his arrest.  
20 There's been an explanation about having the wrong box number.  
21 Of course, we don't have very many of the facts at this point  
22 as to who gave that box number to begin with, whether that's  
23 something they got from him initially or what the situation is  
24 with that. But at this point, there is a warrant that's  
25 outstanding. So at least as of now, even if the Court released

1 Mr. Alvarado, I assume he would be taken into custody by their  
2 -- remain in custody and go over to the State and address that.

3 **MR. GARCIA:** Your Honor, I failed to explain. On  
4 Defendant's Exhibit Number 7, the correct address that he gave  
5 is actually his address and it's on Defendant's Exhibit Number  
6 7. Defendant's Exhibit 8 where it was mailed, was mailed to  
7 the incorrect address. He gave the correct address and it was  
8 mailed to the incorrect address. On the top of Defendant's 7  
9 has the correct P.O. Box and they sent it to the incorrect P.O.  
10 Box on Defendant's 8.

11 **(Judge conferred with clerk)**

12 **THE COURT:** All right. Okay, so I can see where that  
13 -- although it is just a form that indicates there is the  
14 correct address on one of these forms as to, you know, where  
15 that came from and so forth and then on the other one, it's got  
16 a different address on there for whatever reason. Although I  
17 am a little confused by the -- what this is trying to show here  
18 because the -- he failed to appear according to the information  
19 pretrial got. That was in November of 2011. The form with the  
20 wrong address is dated January of 2012. So I'm not sure --

21 **MR. GARCIA:** I can explain that, your Honor. What  
22 happens is after the court date, the court will issue what's  
23 called that judgment nisi.

24 **THE COURT:** Right.

25 **MR. GARCIA:** That judgment nisi is sent to the same

1 address that they initially sent the notice to, that 2101.

2 That's where that came from.

3 **THE COURT:** Well, you're assuming that they sent the  
4 initial notice to the wrong address rather than the right one  
5 that's on Number 7.

6 **MR. GARCIA:** I'm not assuming that. I'm proffering  
7 that to the Court based on the -- on my client's mother  
8 bringing in these documents in order to explain what had  
9 occurred and what she tried to do at the County. And just --  
10 we just ask the Court to consider it and make a ruling, your  
11 Honor. Thank you.

12 **THE COURT:** Okay. In any event, I think it's a  
13 little unclear exactly what happened with that and it may be as  
14 the family was suggested -- suggesting that there may be --  
15 it's -- I'd say that's not clear from at least the things I'm  
16 looking at. There's -- if we had the actual -- presumably  
17 there would have been a notice that would have said, you know,  
18 this is set for November 2nd, 2011. And if that -- we just had  
19 a copy of that that was addressed to the wrong address, then  
20 that would be a little more clear as far as that being the  
21 cause of that problem.

22 But in any event -- so that is outstanding that  
23 there's that and there was also a charge that Mr. Alvarado had  
24 as a juvenile as well that's not as significant in this context  
25 but it was a drug-related matter and so that's not a helpful

1 thing either though.

2 In looking at the circumstances, again as to  
3 Mr. Arnoldo Alvarado, I am going to enter an Order of Detention  
4 based on the very troubling nature of the alleged offense here,  
5 the circumstances of him going out with his brother and father  
6 and firing his weapon in that way and then together with the  
7 outstanding warrant for his arrest for failure to appear.

8 If there's new information or if there's other  
9 information that we could look at on this further, again, the  
10 situation I think is closer with -- clearly closer with regard  
11 to Arnoldo Alvarado given, you know, his situation being  
12 different and so if there is material additional evidence or  
13 information we could look at, you could -- counsel could move  
14 to reopen the hearing and it's maybe appropriate in connection  
15 with this to consider that further if that's the case. But I'm  
16 going to enter an Order of Detention based on those --  
17 considering all the factors including the positive  
18 circumstances but that's the reason for the Court's ruling.

19 Mr. Garcia, was there anything else that we ought to  
20 take up here today with regard to Mr. Arnoldo Alvarado?

21 **MR. GARCIA:** No, your Honor.

22 **THE COURT:** We do also need to address the material  
23 witnesses and so -- and, Mr. Alvarado, if you could just please  
24 come forward, sir, right up here in front. And there were two  
25 witnesses that were detained in this case. There has been a

1 motion that's been filed to take the depositions of the  
2 material witnesses and -- is there two of them or --

3 **THE CLERK:** Yes. Mr. Longoria filed his and  
4 Mr. Welch has not as of today.

5 **THE COURT:** Okay. And so I guess as to one of the  
6 material witnesses, there's a motion and as to your client,  
7 Mr. Welch or --

8 **MR. WELCH:** Thank you, your Honor. Kyle Welch, your  
9 Honor, with the Federal Defender's Office. We were appointed  
10 to represent Mr. Gutierrez-Mendez who is one of the material  
11 witnesses in this case. He's -- I have not had a chance to  
12 meet with him. He's been kept at a remote location. I intend  
13 to meet with him this week. I know that the usual procedure on  
14 material witnesses is to file a motion to depose the witnesses  
15 in a very expeditious fashion but I feel like I should -- it's  
16 a little premature in this case but obviously, your Honor, this  
17 is not the run-of-the-mill case and given all the circumstances  
18 that I know about as to the circumstances in which he was  
19 detained, I think it would be appropriate before I file that  
20 motion to meet with Mr. Gutierrez to consult further with the  
21 government and to make sure that Mr. Gutierrez's rights are  
22 protected with regard to any exposure or liability that he  
23 might have in this case, your Honor.

24 I would anticipate that I would get a reasonable  
25 amount of time to meet with him and to investigate the case a

1 little further and I will be filing that motion and -- but I  
2 haven't filed it at this point. So I guess what I would ask  
3 the Court to do is to hold this matter in abeyance with regard  
4 to this particular issue of material witness depositions and to  
5 give me a chance to consult with him and perhaps we can take  
6 this matter up in a week or so.

7 **THE COURT:** Okay. And on behalf of the material  
8 witnesses, Mr. Longoria, we appreciate you in assisting the  
9 other material witness, I should say, in connection with this.  
10 Oh, there you are and --

11 **MR. LONGORIA:** Thank you, your Honor. Just for the  
12 record, I haven't had a chance to meet my client. I was  
13 looking forward to possibly meeting with him this week or next  
14 week.

15 **THE COURT:** All right. Why don't we reset this as to  
16 the witnesses? It's a little bit different from the standpoint  
17 of, you know, there may be some different issues from the  
18 standpoint of the Defendants in this case as compared to some  
19 of the other cases where we typically have material witnesses.  
20 I'm not sure about that but at least I think the additional  
21 time would probably be helpful for everyone. So I'm going to  
22 reset this for a week from today, Tuesday at --

23 **MR. UNIDENTIFIED:** I'm on vacation next week --

24 **THE COURT:** Okay.

25 **MR. UNIDENTIFIED:** -- all next week.

1           **THE COURT:** All right. Well --

2           **MR. WELCH:** I would have no objection being set the  
3 following week, your Honor. That would -- both of these -- our  
4 clients are from El Salvador. They're not going to be going  
5 anywhere very quickly anyway and I certainly -- you know, it's  
6 kind of a matter of balancing the clients (indiscernible) and  
7 moving expeditiously in setting up the depositions but also  
8 making sure that I've had an opportunity to evaluate -- or  
9 we've had an opportunity to evaluate whatever exposure that  
10 they might have arising out of this transaction as well. So I  
11 would have no objection to the Court setting this matter until  
12 -- for the following week.

13           **THE COURT:** Mr. Alvarez, let me just ask this. I  
14 mean, if you -- is that something -- as far as the motion to  
15 depose to material witnesses, I mean do you already know your  
16 client's position on that at this time? And if so, we could --  
17 you know, if you want to -- we could address that now and then  
18 it would be up to the, you know, counsel.

19           **MR. GARCIA:** Normally I would have no objection to  
20 the motion but, you know, this is a different type of case. I  
21 may have an objection to it but after I discuss this with my  
22 client, I think I -- with Mr. Welch here, I think we just need  
23 some time to --

24           **THE COURT:** Right.

25           **MR. GARCIA:** -- determine whether or not we're going

1 to waive or not -- depose or not.

2           **THE COURT:** Okay. And, Mr. Garcia, at this point, do  
3 you have a position already with regard to Mr. Arnaldo  
4 Alvarado?

5           **MR. GARCIA:** Not yet, your Honor.

6           **THE COURT:** Okay. So given the circumstances here --  
7 and I do believe it's appropriate to continue the determination  
8 on the motion to depose that's already been filed with regard  
9 to one of the material witnesses and then have some additional  
10 time to determine on behalf of the other material witness  
11 whether or not they -- how they wish to proceed.

12           Just for the Defendant's benefit, I mean, what we're  
13 discussing is that two individuals were held -- are being held  
14 in custody that the Government has named as witnesses. The  
15 Government's filed an affidavit indicating that these  
16 individuals had knowledge of facts essentially that are related  
17 to the charge in this case. Because they're in the United  
18 States illegally, they're going to remain in custody until  
19 their testimony can be taken in connection with this.

20           The typical procedure in cases where there are  
21 material witnesses is that there's a deposition that's taken  
22 and the Defendants' attorneys participate in that and examine  
23 the witnesses on behalf of the Defendant to protect their  
24 interest and then once the depositions are taken, then the  
25 material witnesses can be released and not need to remain

1 further in custody. So that's what we're addressing at this  
2 point.

3           The -- by taking the depositions and having each of  
4 your attorneys present and ask questions, then the right to  
5 each Defendant to confront witnesses is preserved. At the same  
6 time, the witnesses would not need to remain in custody for a  
7 longer time which might otherwise be necessary. So the  
8 difficulty I have is I would not be able to set this for the --  
9 that next week unless I can convince Judge Ramos to handle this  
10 for me. I'm actually going to be at a court workshop that  
11 week. So it would have to either be the next week which would  
12 be -- that would take it to three weeks or I can discuss this  
13 with Judge Ramos and see if we can have her handle this. Any  
14 preference on which way we go with that?

15           **MR. UNIDENTIFIED:** I have no preference, your Honor.

16           **MR. UNIDENTIFIED:** No preference, your Honor.

17           **MR. UNIDENTIFIED:** No preference, your Honor.

18           **MR. UNIDENTIFIED:** Your Honor, I'm not - I'm not able  
19 to bring in my calendar on my phone into the courtroom so I  
20 can't get tell the Court.

21           **THE COURT:** That's -- yeah. Okay. Well, what I'm  
22 going to do is I'm going to set this for the 31st which is  
23 three weeks from today at 3:00 o'clock and if in consulting  
24 with your calendars or otherwise considering this further,  
25 anyone has an objection either to waiting that long or to that

1 particular date, you-all can just, you know, file a brief  
2 motion and I'd be willing to consider resetting that and unless  
3 I hear anything, I'll keep it set for that date as opposed to  
4 trying to address that earlier.

5 And if you talk to the -- your client's, Mr. Welch  
6 and Mr. Longoria, and it's obvious they want to proceed and  
7 would like to do so more quickly, then if you'll, you know,  
8 request that, you know, the hearing be expedited, then I'm  
9 pretty sure Judge Ramos would be willing to handle that sooner.

10 **MR. UNIDENTIFIED:** Very well, your Honor. I will be  
11 seeing my client this week.

12 **THE COURT:** Okay. So we'll go ahead and do that as  
13 to the material witness issue and I believe that should be  
14 everything we would need to address in this case. Was there  
15 anything else that we had to take up here today? Thank you.  
16 You-all can be excused then. Thank you.

17 **(This proceeding was adjourned at 4:24 p.m.)**  
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CERTIFICATION

I certify that the foregoing is a correct transcript from the electronic sound recording of the proceedings in the above-entitled matter.



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Signed

September 6, 2012

Dated

*TONI HUDSON, TRANSCRIBER*